

"Traditional" Waiver of Family Division Jurisdiction

Summary of Contents

Part I — Introduction

24.1	Motions for Waiver by Prosecuting Attorney	2
24.2	No "Juvenile Sentencing Hearing" in Circuit Court Following Waiver and Conviction.....	3
24.3	Waiver Proceedings When Juvenile Is Over 17 Years of Age at Time of Waiver Hearing.....	3
24.4	Time Requirements for Filing Motions to Waive Jurisdiction.....	3
24.5	Judge Must Preside at Waiver Hearing	3
24.6	Notice of Hearing and Service of Process.....	4
24.7	Right to Counsel	4

Part II — First Phase of Waiver Hearings

24.8	Purpose of First-Phase Hearings	5
24.9	Waiver of First-Phase Hearings	5
24.10	Establishment of Probable Cause at a Preliminary Hearing Rather Than at First-Phase Hearing	6
24.11	Time Requirements for First-Phase Hearings	6
24.12	Rules of Evidence at First-Phase Hearings	6

Part III — Second Phase of Waiver Hearings

24.13	Purpose of Second-Phase Hearings	7
24.14	Special Circumstances Where No Second-Phase Hearing Is Required	7
24.15	Time Requirements for Second-Phase Hearings	7
24.16	Burden of Proof at Second-Phase Hearings	7
24.17	Rules of Evidence at Second-Phase Hearings	8
24.18	Access by Defense Counsel to Records and Reports	8
24.19	Criteria to Consider at Second-Phase Hearings	8
24.20	Procedures by Court When Waiver Is Ordered	9
24.21	Procedures by Court When Waiver Is Denied	10
24.22	Time Requirements for Trial When Waiver Is Denied	10
24.23	Notice of Right to Appeal.....	10

Part IV — Proceedings in Criminal Division Following Second Phase of Waiver Hearing

24.24	Transfer to Adult Criminal Justice System	11
24.25	Use of Psychiatric Testimony at Criminal Trials in the Criminal Division.....	11
24.26	Alternative Sentences for Certain Major Controlled Substance Offenses	12
24.27	Places of Detention for Juveniles Charged Under the "Traditional" Waiver Statute.....	14

Part I — Introduction

24.1 Motions for Waiver by Prosecuting Attorney

*See Form JC 18.

MCL 712A.4(1); MSA 27.3178(598.4)(1), states that if a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the judge of the Family Division of the county in which the offense is alleged to have been committed may waive jurisdiction upon motion of the prosecuting attorney. A motion by the prosecuting attorney requesting the Family Division to waive its jurisdiction to a court of general criminal jurisdiction must be in writing and must clearly indicate the charges and that if the motion is granted the juvenile will be prosecuted as though an adult. MCR 5.950(A).*

“Felony” means an offense punishable by imprisonment for more than one year or an offense expressly designated by law as a felony. MCL 712A.4(11); MSA 27.3178(598.4)(11), and MCR 5.950(F).

Because of the possible consequences of the waiver decision, a hearing on the motion to waive jurisdiction, access to records and reports, a statement of reasons for the decision on the motion, and the effective assistance of counsel are necessary to satisfy the basic requirements of due process and fairness. *Kent v United States*, 383 US 541, 553–54; 86 S Ct 1045; 16 L Ed 2d 84 (1966).

In *Breed v Jones*, 421 US 519, 531; 95 S Ct 1779; 44 L Ed 2d 346 (1975), the United States Supreme Court held that jeopardy attaches when a juvenile court assumes jurisdiction over a juvenile as a delinquent. Therefore, requiring waiver proceedings to occur before the adjudicatory phase of a delinquency proceeding is constitutionally required, and does not diminish the juvenile court’s ability to create flexible remedies. *Id.*, at 535–41. See also *People v Saxton*, 118 Mich App 681, 688–89 (1982).

The Court of Appeals has held that if the prosecuting attorney files a petition in the Family Division and a motion to waive Family Division jurisdiction under MCL 712A.4; MSA 27.3178(598.4), that election constitutes a waiver of the alternative option of authorizing a complaint and warrant under the “automatic” waiver statute. *In re Fultz*, 211 Mich App 299, 311–12 (1995). However, the Michigan Supreme Court has ordered that the Court of Appeals’ opinion on this “election of forum” issue have no precedential force or effect. *In re Fultz*, 453 Mich 934 (1996).

24.2 No “Juvenile Sentencing Hearing” in Circuit Court Following Waiver and Conviction

After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense. MCL 712A.4(1); MSA 27.3178(598.4)(1). If convicted in a court of general criminal jurisdiction, the juvenile must be sentenced as an adult, and there will be no “waiver back” or “juvenile sentencing” proceeding. MCR 6.901(B) and *People v Cosby*, 189 Mich App 461, 464 (1991).*

*See Section 23.5 for a discussion of the purpose of “juvenile sentencing hearings” in “automatic” waiver cases.

24.3 Waiver Proceedings When Juvenile Is Over 17 Years of Age at Time of Waiver Hearing

MCL 712A.3(1); MSA 27.3178(598.3)(1), requires another court to transfer the case to the Family Division if it is determined that the charged offense occurred when the juvenile was under 17 years of age. On the other hand, MCL 712A.2a(1); MSA 27.3178(598.2a)(1), provides that the jurisdiction of the Family Division over a juvenile shall continue until the juvenile attains the age of 19, except for certain serious offenses listed in MCL 712A.2a(2); MSA 27.3178(598.2a)(2), which allow for extension of jurisdiction until age 21.

To resolve the conflict between these two statutes, the Court of Appeals has held that if the juvenile was under 17 years of age at the time of the offense, but is over 17 at the time of the waiver hearing, then the Family Division has jurisdiction for the limited purpose of holding a waiver hearing pursuant to MCL 712A.4; MSA 27.3178(598.4). If the Family Division declines to waive its jurisdiction, then the case must be dismissed if the juvenile is over age 19, or authorized for trial if the juvenile is under age 19. *People v Schneider*, 119 Mich App 480, 484–87 (1982), and *People v Kincaid*, 136 Mich App 209, 213 (1984).

24.4 Time Requirements for Filing Motions to Waive Jurisdiction

A motion to waive jurisdiction must be filed within 14 days after the filing of the petition. Absent a timely motion and good cause shown, the juvenile shall no longer be subject to waiver of jurisdiction on the charges. MCR 5.950(A)(1).

24.5 Judge Must Preside at Waiver Hearing

A judge of the Family Division must preside at a waiver proceeding conducted pursuant to MCR 5.950. MCR 5.912(A)(1)(e).

24.6 Notice of Hearing and Service of Process

*See Form JC 18.

MCL 712A.4(2); MSA 27.3178(598.4)(2), states that, as prescribed in the applicable court rule, the court must give notice of the waiver hearing to the juvenile, the prosecuting attorney, and, if addresses are known, to the juvenile's parents or guardian. The notice shall state clearly that a waiver of jurisdiction to a court of general criminal jurisdiction has been requested, and that, if granted, the juvenile can be prosecuted for the alleged offense as though he or she were an adult.*

A. Personal Service of Waiver Motion

A copy of the motion seeking waiver shall be personally served on the juvenile and the parent of the juvenile, if their addresses or whereabouts are known or can be determined by exercise of due diligence. MCR 5.950(A)(2).

B. Notice of Hearing

*See Section 8.5 (notices of hearings).

MCR 5.950(B) explains that the waiver hearing consists of two phases and provides that notice of the date, time, and place of the hearings may be given either on the record directly to the juvenile or to the attorney for the juvenile, the prosecuting attorney, and all other parties, or in writing, served on each individual.*

C. Victim's Right to Be Present

The victim has the right to be present throughout the entire waiver hearing, unless the victim is going to be called as a witness, in which case the court, for good cause shown, may order the victim to be sequestered until the victim first testifies. MCL 780.789; MSA 28.1287(789).

24.7 Right to Counsel

*See Form JC 03.

If legal counsel has not been retained or appointed to represent the juvenile, the court shall advise the juvenile and his or her parents, guardian, custodian, or guardian ad litem of the juvenile's right to representation and shall appoint legal counsel. If the court appoints legal counsel for waiver proceedings under the Juvenile Code, the cost of providing such legal counsel may be assessed against the juvenile or those responsible for his or her support, or both, if the persons to be assessed are financially able to comply. MCL 712A.4(6); MSA 27.3178(598.4)(6).*

A juvenile has a federal constitutional right to be represented by counsel at a waiver hearing. *Kent v United States*, 383 US 541; 86 S Ct 1045; 16 L Ed 2d 84 (1966), *People v McGilmer*, 95 Mich App 577, 580 (1980) (application of *Kent* in Michigan), and *In re Gault*, 387 US 1, 41; 87 S Ct 1428; 18 L Ed 2d 527 (1967) (right to notice of right to counsel and

appointment of counsel in appropriate cases). See also MCR 5.915 (right to counsel at all phases of juvenile proceedings) and *People v Whitfield*, 214 Mich App 348, 353–55 (1995) (ineffective assistance of counsel at waiver hearing).

NOTE: The parents or legal guardians may be assessed costs of attorney fees only for the fees that were incurred as a result of the attorney's representation of the juvenile in the Family Division. Once the Family Division has waived jurisdiction over the juvenile and the Criminal Division obtains jurisdiction, the court rules and statutes governing adult proceedings apply.*

*See Section 20.32, Note, for a discussion of reimbursement of attorney fees in criminal cases.

Part II — First Phase of Waiver Hearings

24.8 Purpose of First-Phase Hearings

The first-phase hearing is held to determine whether there is probable cause that an offense has been committed that if committed by an adult would be a felony, and whether there is probable cause that the juvenile who is 14 years of age or older committed the offense. MCR 5.950(B)(1) and MCL 712A.4(3); MSA 27.3178(598.4)(3).

The determination to be made at a first-phase hearing is analogous to the determination made at the preliminary examination of a criminal proceeding. The court must only find that there is probable cause that the accused committed the charged offense. *People v Burdin*, 171 Mich App 520, 522 (1988). However, juveniles must be afforded the same constitutional protections during first-phase hearings as adults facing a preliminary examination. *People v Hana*, 443 Mich 202, 225, n 62 (1993), and cases cited therein.*

*See Monograph 5, *Preliminary Examinations* (MJI, 1992), and Sections 16.26–16.32.

24.9 Waiver of First-Phase Hearings

The court need not conduct the first phase of the waiver hearing if the juvenile waives the hearing, after being informed by the court on the record that the probable cause hearing is equivalent to and held in place of preliminary examination in district court pursuant to MCL 766.1 to 766.18; MSA 28.919 to 28.936. The court must determine that the waiver of hearing is freely, voluntarily, and understandingly given and that the juvenile knows there will be no preliminary examination in district court if the Family Division waives jurisdiction. MCR 5.950(B)(1)(c)(ii) and MCL 712A.4(3); MSA 27.3178(598.4)(3).*

*See Section 24.24, Note, below.

24.10 Establishment of Probable Cause at a Preliminary Hearing Rather Than at First-Phase Hearing

*See Section 7.15.

The court need not conduct the first phase of the waiver hearing if the court has found the requisite probable cause during the pretrial detention determination at a preliminary hearing under MCR 5.935(D)(1), provided that at the earlier hearing only legally admissible evidence was used to establish probable cause that the offense was committed and probable cause that the juvenile committed the offense. MCR 5.950(B)(1)(c)(i).*

24.11 Time Requirements for First-Phase Hearings

The probable-cause hearing must commence within 28 days after the filing of the petition, unless adjourned for good cause. MCR 5.950(B)(1)(a). See *People v Sweet*, 124 Mich App 626, 629 (1983).

If a petition and motion to waive jurisdiction are dismissed for lack of timeliness, the prosecutor may file a second petition, which resets the 14-day time limit for a waiver motion unless the juvenile shows a violation of due process or prosecutorial bad faith. *People v McCoy*, 189 Mich App 201, 203 (1991) (petition and motion to waive jurisdiction dismissed when prosecutor failed to produce investigating officer and the complainant to testify at the waiver hearing, held on the twenty-eighth day after the petition was filed).

24.12 Rules of Evidence at First-Phase Hearings

MCR 5.950(B)(1)(b) states that the prosecuting attorney has the burden to present legally admissible evidence to establish each element of the offense and to establish probable cause that the juvenile committed the offense.

The rules of evidence apply during the first phase of the waiver hearing. *People v Williams*, 111 Mich App 818, 822 (1981). Constitutional protections extended to juveniles apply during the first phase of waiver proceedings. *People v Hana*, 443 Mich 202, 214–24, 225–26 (1993).

The voluntariness of a confession must be established before it may be admitted during the first phase of a waiver hearing. *People v Morris*, 57 Mich App 573, 576 (1975), and *People v Good*, 186 Mich App 180, 185 (1990).*

*See Section 9.16 for discussion of violations of the “immediacy” rule and the voluntariness of confessions.

Part III — Second Phase of Waiver Hearings

24.13 Purpose of Second-Phase Hearings

If the court finds the requisite probable cause at the first-phase hearing, or if there was no hearing pursuant to MCR 5.950(B)(1)(c)*, the second-phase hearing shall be held to determine whether the interests of the juvenile and the public would best be served by granting the motion for waiver of jurisdiction. MCR 5.950(B)(2).

During the second phase of a waiver hearing, the court cannot accept a plea of admission from a juvenile to a lesser-included offense, thereby assuming jurisdiction over the juvenile as a delinquent, without the concurrence of the prosecutor. The court must allow the prosecuting attorney to present evidence supporting the motion for waiver and determine whether the best interests of the juvenile and public support waiver. *In re Wilson*, 113 Mich App 113, 121 (1982), citing *Genesee Prosecutor v Genesee Circuit Judge*, 386 Mich 672 (1972), and *Genesee Prosecutor v Genesee Circuit Judge*, 391 Mich 115 (1974) (in criminal cases, acceptance of plea to a lesser-included offense over prosecutor's objection violates separation of powers doctrine). See also MCL 712A.11(1) and (2); MSA 27.3178(598.11)(1) and (2) (only the prosecuting attorney may authorize the filing of a delinquency petition alleging a criminal offense).

*See Sections 24.9 (waiver) and 24.10 (establishment of probable cause at preliminary hearing), above.

24.14 Special Circumstances Where No Second-Phase Hearing Is Required

If the juvenile has previously been subject to the jurisdiction of the circuit court or the Recorder's Court pursuant to the "traditional" or "automatic" waiver procedures, then the Family Division shall waive jurisdiction to the Criminal Division without holding the second-phase hearing. MCR 5.950(B)(2) and MCL 712A.4(5); MSA 27.3178(598.4)(5).*

*See Section 2.7 for a discussion of jurisdiction in "automatic" waiver cases.

24.15 Time Requirements for Second-Phase Hearings

The second-phase hearing must commence within 28 days after the conclusion of the first-phase hearing, or within 35 days after the filing of the petition if there was no first-phase hearing pursuant to MCR 5.950(B)(1)(c),* unless adjourned for good cause. MCR 5.950(B)(2)(b).

*See Sections 24.9 (waiver) and 24.10 (establishment of probable cause at preliminary hearing), above.

24.16 Burden of Proof at Second-Phase Hearings

MCR 5.950(B)(2)(c) states that the prosecuting attorney has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and the public would be served by waiver.

24.17 Rules of Evidence at Second-Phase Hearings

The Michigan Rules of Evidence, other than those with respect to privileges, do not apply at the second phase of the waiver hearing. MCR 5.950(B)(2)(a). See *People v Hana*, 443 Mich 202, 225–26 (1993) (“full panoply of constitutional rights was never intended to apply to the dispositional phase of a waiver hearing”; admission during second phase of waiver hearing of juvenile’s uncounselled statements, made to police and court psychologist during post-*Miranda* custodial interrogation, did not violate any constitutional provision).

Inadmissible evidence, including the juvenile’s prior criminal acts not resulting in conviction, may be introduced at the phase-two hearing, as long as the evidence is relevant and material. *People v Williams*, 111 Mich App 818, 822–23 (1981).

24.18 Access by Defense Counsel to Records and Reports

Legal counsel must have access to records or reports provided and received by the judge as a basis for decision in proceedings for waiver of jurisdiction. A continuance must be granted at legal counsel’s request if any report, information, or recommendation, not previously available, is introduced or developed at the hearing and the interests of justice require a continuance. MCL 712A.4(7); MSA 27.3178(598.4)(7). Because of the possible consequences of the waiver decision, access to records and reports is necessary to satisfy the basic requirements of due process and fairness. *Kent v United States*, 383 US 541, 553–54; 86 S Ct 1045; 16 L Ed 2d 84 (1966).

24.19 Criteria to Consider at Second-Phase Hearings

MCR 5.950(B)(2)(d)(i)–(vi) and MCL 712A.4(4)(a)–(f); MSA 27.3178(598.4)(4)(a)–(f), state that in determining whether the best interests of the public and the juvenile would be served by waiver of jurisdiction to a court of general criminal jurisdiction, the court must consider and make findings on all of the following criteria, giving greater weight to the seriousness of the alleged offense and the juvenile’s prior delinquency record than to the other criteria:

- F the seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines,* the use of a firearm or other dangerous weapon, and the effect upon any victim;
- F the culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;
- F the juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;

*See Michigan Sentencing Guidelines (2d ed, 1988), and Section 20.9, Note, on the status of legislative sentencing guidelines.

- F the juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
- F the adequacy of the punishment or programming available in the juvenile justice system; and
- F the dispositional options available for the juvenile.

NOTE: The criteria listed above are also used to decide whether to designate the case for criminal trial within the Family Division, to decide whether to impose an adult sentence or juvenile disposition following conviction in designated cases, and to decide whether to impose an adult sentence following conviction in "automatic" waiver cases. However, in "traditional" waiver cases and in designation hearings in designated cases, the court must consider the best interests of *both* the juvenile and the public; whereas, in "automatic" waiver cases and in sentencing hearings of designated cases, the court must consider only the best interests of the public.*

*See Sections 16.21 and 19.2 (designated cases) and 23.6 ("automatic" waiver cases).

"Full investigation" of the circumstances surrounding the offender and offense is necessary to satisfy the basic requirements of due process and fairness. *Kent v United States*, 383 US 541, 553; 86 S Ct 1045; 16 L Ed 2d 84 (1966). However, the probate court is not required to investigate juvenile services outside the county before waiving jurisdiction. *People v Fowler*, 193 Mich App 358, 361–62 (1992).

The court may consider any stipulation by the defense to a finding that the best interests of the juvenile and the public support waiver. MCR 5.950(B)(2)(e).

24.20 Procedures by Court When Waiver Is Ordered*

MCL 712A.4(8); MSA 27.3178(598.4)(8), and MCR 5.950(C)(1)(a), (b), and (d) provide that if the court determines that it is in the best interests of the juvenile and the public to waive jurisdiction over the juvenile, the court must:

- F enter a written order granting the motion to waive jurisdiction and transferring the matter to the appropriate court having general criminal jurisdiction for arraignment of the juvenile on an information;
- F make findings of fact and conclusions of law forming the basis for entry of the waiver order. The findings and conclusions may be incorporated in a written opinion or stated on the record; and
- F send a copy of the order waiving jurisdiction and the transcript of the court's findings or a copy of the written opinion to the court of general criminal jurisdiction.

Because of the possible consequences of the waiver decision, a statement of reasons for the decision on the motion is necessary to satisfy the basic requirements of due process and fairness. *Kent v United States*, 383 US 541, 553–54; 86 S Ct 1045; 16 L Ed 2d 84 (1966). The statement of reasons must refer specifically to evidence of record. *People v Schumacher*, 75 Mich App 505, 514 (1977).

*See Section 25.5 for a discussion of the juvenile's right to appeal the order waiving jurisdiction.

*See Section 25.5, Note, for a discussion of prosecutorial appeals of the order denying waiver of jurisdiction.

*See Chapter 11 (trials in delinquency cases).

*See Section 25.5 for a discussion of the juvenile's right to appeal the order waiving jurisdiction.

24.21 Procedures by Court When Waiver Is Denied*

If the court does not waive jurisdiction, the court must enter an appropriate order and make written findings of fact and conclusions of law or place them on the record. A transcript of the court's findings or a copy of the written opinion shall be sent to the prosecuting attorney, the juvenile, or the juvenile's attorney upon request. MCL 712A.4(8)–(9); MSA 27.3178(598.4)(8)–(9), and MCR 5.950(D).

24.22 Time Requirements for Trial When Waiver Is Denied

MCR 5.950(D) states that if the juvenile is detained and the trial of the matter in juvenile court has not started within 28 days after entry of the order denying the waiver motion and the delay is not attributable to the defense, the court must forthwith order the juvenile released pending trial without requiring that bail be posted unless the juvenile is being detained on another matter.

MCR 5.942(A) states that all trials in juvenile court must be commenced within six months after the filing of the petition, unless adjourned for good cause.*

24.23 Notice of Right to Appeal

The court must also advise the juvenile, orally or in writing, that:

- (i) the juvenile is entitled to appellate review of its decision to waive jurisdiction;
- (ii) the juvenile must seek review of the decision in the Court of Appeals within 21 days of the order to preserve the appeal of right; and
- (iii) if the juvenile is financially unable to retain a lawyer, the court will appoint a lawyer to represent the juvenile on appeal.

MCR 5.950(C)(1)(c)(i)–(iii).

A guilty plea by the juvenile in circuit court does not render an appeal of the decision to waive jurisdiction moot. *People v Rader*, 169 Mich App 293, 299–300 (1988).*

Part IV — Proceedings in Criminal Division Following Second Phase of Waiver Hearings

24.24 Transfer to Adult Criminal Justice System

MCR 5.950(C)(2) states that upon the grant of a waiver motion, a juvenile shall be transferred to the adult criminal justice system and shall be subject to the same procedures used for adult criminal defendants. Juveniles waived pursuant to this rule are not required to be kept separate and apart from adult prisoners.

If the Family Division waives jurisdiction, the juvenile must be arraigned on an information filed by the prosecutor in the court of general criminal jurisdiction. The probable cause finding in the first-phase hearing satisfies the requirements of, and is the equivalent of, the preliminary examination required by the Code of Criminal Procedure. Thus, the juvenile is not entitled to a preliminary examination in district court following “traditional” waiver. MCL 712A.4(10); MSA 27.3178(598.4)(10).

NOTE: Prior to the 1996 amendment to MCL 712A.4; MSA 27.3178(598.4), that added subsection (10), the juvenile was entitled to a preliminary examination in district court upon demand. See *People v Phillips*, 416 Mich 63, 75 (1982), and *People v Dunigan*, 409 Mich 765, 768–69 (1980).

A juvenile defendant over whom jurisdiction was waived for an offense cannot be charged with a greater offense in the Criminal Division. *People v Hoerle*, 3 Mich App 693, 698 (1966). However, a guilty plea to an included felony (but not a misdemeanor) other than that with which the defendant was charged is not precluded. *People v Smith*, 35 Mich App 597, 598 (1971). See also *People v Peters*, 397 Mich 360 (1976) (plea to second-degree murder after waiver on charge of first-degree felony murder).

24.25 Use of Psychiatric Testimony at Criminal Trials in the Criminal Division

MCR 5.950(E)(1) states that a psychiatrist, psychologist, or certified social worker who conducts a court-ordered examination for purposes of a waiver hearing may not testify at a subsequent criminal proceeding involving a juvenile without the juvenile’s written consent.

The juvenile’s consent may only be given:

- (a) in the presence of an attorney representing the juvenile or, if no legal counsel represents the juvenile, in the presence of a parent;

- (b) after the juvenile has had an opportunity to read the report of the psychiatrist, psychologist, or certified social worker; and
- (c) after the waiver decision is rendered.

MCR 5.950(E)(2)(a)–(c).

Consent to testimony by the psychiatrist, psychologist, or certified social worker does not constitute waiver of the juvenile’s privilege against self-incrimination. MCR 5.950(E)(3).

24.26 Alternative Sentences for Certain Major Controlled Substance Offenses

NOTE 1: There were several amendments made to the Controlled Substance Act in 1996 that were designed specifically for juveniles who are charged with major controlled substances offenses in designated proceedings and waiver proceedings.* These amendments are discussed here. For information about controlled substance offense sentences that apply to both juveniles and adults, see *Managing a Trial Under the Controlled Substances Act*, Chapter 15 (MJJ, 1995).

If convicted in a court of general criminal jurisdiction, the juvenile must be sentenced as an adult, and there will be no “waiver back” or “juvenile sentencing” proceeding. MCR 6.901(B).

However, MCL 769.1(12); MSA 28.1072(12), states that if an individual under the circuit court’s jurisdiction pursuant to MCL 712A.4; MSA 27.3178(598.4), is convicted of a violation or conspiracy to commit a violation of MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), or of MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i) (manufacture, sale, delivery, possession with intent to deliver, or possession of more than 650 grams of a Schedule 1 or 2 narcotic or cocaine), the court must determine whether the best interests of the public would be served by:

- F imposing the sentence provided by law for an adult offender (mandatory life imprisonment);
- F placing the individual on probation and committing the individual to a state institution or agency; or
- F imposing a sentence of imprisonment for any term of years but not less than 25 years, if the court determines by clear and convincing evidence that such a sentence would serve the best interests of the public.

In making this determination, the court shall use the same criteria as listed in MCL 769.1(3); MSA 28.1072(3). MCL 769.1(12); MSA 28.1072(12).*

If the juvenile is convicted of a violation of MCL 333.7401(2)(a)(ii)–(iv); MSA 14.15(7401)(2)(a)(ii)–(iv), or MCL 333.7403(2)(a)(ii)–(iv); MSA

*See Section 23.6 for a list of these criteria.

14.15(7403)(2)(a)(ii)–(iv), the court may depart from the mandatory minimum terms listed below if the juvenile has not previously been convicted of a felony or an assaultive crime, and has not been convicted of another felony or assaultive crime arising from the same transaction as the controlled substance violation. MCL 333.7401(4)(b); MSA 14.15(7401)(4)(b), and MCL 333.7403(3)(b); MSA 14.15(7403)(3)(b).

The controlled substance offenses covered by this alternative sentencing provision and their mandatory minimum terms are as follows:

F Manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver the following amounts of a Schedule 1 or 2 narcotic drug or cocaine:

- 225 grams or more, but less than 650 grams. Not less than 20 years nor more than 30 years. MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii).
- 50 grams or more, but less than 225 grams. Not less than 10 years nor more than 20 years. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii).
- Less than 50 grams. Not less than 1 year nor more than 20 years, and may be fined not more than \$25,000.00, *or* placed on probation for life. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv).

F Possession of the following amounts of a Schedule 1 or 2 narcotic drug or cocaine:

- 225 grams or more, but less than 650 grams. Not less than 20 years nor more than 30 years. MCL 333.7403(2)(a)(ii); MSA 14.15(7403)(2)(a)(ii).
- 50 grams or more, but less than 225 grams. Not less than 10 years nor more than 20 years. MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii).
- 25 grams or more, but less than 50 grams. Not less than 1 year nor more than 4 years, and may be fined not more than \$25,000.00, *or* placed on probation for life. MCL 333.7403(2)(a)(iv); MSA 14.15(7403)(2)(a)(iv).

NOTE 2: It does not appear that the court also needs “substantial and compelling reasons” to depart from the mandatory minimum sentences listed above. See MCL 333.7401(4)(b); MSA 14.15(7401)(4)(b), and MCL 333.7403(3)(b); MSA 14.15(7403)(3)(b). See also *Managing a Trial Under the Controlled Substances Act*, Section 15.6 (MJI, 1995), for a discussion of what constitutes “substantial and compelling reasons” under these statutes.

As used in this section, assaultive crime means any of the following offenses:

- F assault and battery, MCL 750.81; MSA 28.276;
- F assault, infliction of serious injury, MCL 750.81a; MSA 28.276(1);
- F felonious assault, MCL 750.82; MSA 28.277;
- F assault with intent to murder, MCL 750.83; MSA 28.278;
- F assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to commit a felony, MCL 750.87; MSA 28.282;
- F assault with intent to rob while unarmed, MCL 750.88; MSA 28.283;
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284;
- F sexual intercourse under pretext of medical treatment, MCL 750.90; MSA 28.285.

MCL 333.7401(5)(a); MSA 14.15(7401)(5)(a), and MCL 333.7403(4); MSA 14.15(7403)(4).

24.27 Places of Detention for Juveniles Charged Under the “Traditional” Waiver Statute

Following the grant of a waiver motion in a “traditional” waiver case, the juvenile is transferred to the adult criminal justice system and is subject to the same procedures used for adult criminal defendants. Juveniles waived under the “traditional” waiver statute need not be kept separate and apart from adult prisoners. MCR 5.950(C)(2). But see 42 USC 5633(a)(13) (prohibits juveniles alleged to be delinquent from being jailed in any institution where they have contact with adult prisoners).

Because neither the statute, MCL 712A.4; MSA 27.3178(598.4), nor the court rule governing “traditional” waiver proceedings, MCR 5.950, provide for detention of the juvenile prior to waiver of jurisdiction, the rules applicable to felony delinquency cases apply. See MCR 5.901(B)(2).*

The pretrial detention rule for delinquency cases, MCR 5.935(D)(5), provides that the juvenile must be detained in the least restrictive environment that will meet the needs of the juvenile and the public, and that will conform to the requirements of MCL 712A.15; MSA 27.3178(598.15), and MCL 712A.16; MSA 27.3178(598.16).

MCL 712A.16(1); MSA 27.3178(598.16)(1), provides that a juvenile under the age of 17 who is taken into custody or detained shall not be confined in any police station, prison, jail, lock-up, or reformatory, or be transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons. However, a juvenile 15 years of age or older whose habits or conduct are considered a menace to other children, or who might not

*See also Section 3.13 for a table summarizing places of detention for juveniles.

otherwise be safely detained, on order of the court, may be placed in a jail or other place of detention for adults, but in a room or ward separate from adults, and for a period not to exceed 30 days, unless longer detention is necessary for the service of process. MCL 764.27a(2); MSA 28.886(1)(2), creates the additional restriction that juveniles confined in a jail or other place of detention for adults must be placed in a room or ward out of sight and sound from adults.

